UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:	)	Case No. 17-40329-659
	)	
WOLAVER, JASON R.,	)	Chapter 7
	)	
Debtor,	)	
	)	
UNITED STATES TRUSTEE,	)	Hon. Kathy A. Surratt-States
	)	Chief U.S. Bankruptcy Judge
Movant,	)	
	)	Courtroom 7 North
v.	)	
	)	
WOLAVER, JASON R.,	)	Hearing Date: April 24, 2017
	)	Hearing Time: 10:00 a.m.
Respondent.	)	

UNITED STATES TRUTEE'S MOTION TO DISMISS CASE
PURSUANT TO 11 U.S.C. § 707(A)

Comes now Daniel J. Casamatta, the Acting United States Trustee for Region 13 (the "UST"), by and through the undersigned Trial Attorney, Leonora Long, and respectfully moves the Court to enter an order dismissing this case pursuant to 11 U.S.C. § 707(a). In support of this motion, the UST respectfully states as follows:

I. Background and Jurisdiction.

1. This Court has jurisdiction of this matter under 28 U.S.C §§ 1134(a) and (b), 28 U.S.C. §§ 157(a) and (b)(1), and 28 U.S.C. § 151. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (B). This motion is filed pursuant to 11 U.S.C. §§ 707(a).

2. Jason R. Wolaver (the "Debtor") filed a voluntary petition under Chapter 7 of Title 11, United States Code (the "Bankruptcy Code") on January 19, 2017.

3. Seth A. Albin, is the duly appointed chapter 7 trustee assigned to the present case. The Section 341 meeting was original scheduled for February 14, 2017 and continued to March 21, 2017.

4. In the fulfillment of his statutory duties, on January 31, 2017, the UST sent via email correspondence with substantive inquiries to counsel concerning the Debtor's case. See Copy of January 31, 2017, Correspondence from Paralegal Sandra Herling filed simultaneously herewith and incorporated herein as Exhibit 1.

5. On February 16, 2017, an additional e-mail was sent to Debtor's counsel as a follow up enclosing a copy of letter dated January 31, 2017. See Copy of February 16, 2017, e-mail, from Paralegal Sandra Herling filed simultaneously herewith and incorporated herein as Exhibit 2.

6. On February 20, 2017, an e-mail was received from Debtor's counsel stating he would have to us that week. See Copy of February 20, 2017, e-mail, from Sean Paul, filed simultaneously herewith and incorporated herein as Exhibit 3.

7. The Debtor's failure to provide the requested information has substantially impeded the UST in his analysis of this case required by § 704(b)(1)(A) and in the fulfillment of his statutory duties.

8. No discharge has been entered in this case.

II. Dismissal Pursuant to Section 707(a).

9. Section 707(a) provides as follows:

(a) The court may dismiss a case under this chapter only after notice and hearing and only for cause including:

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges refunded under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file…information required…11 U.S.C § 707(a).

The foregoing list is not exhaustive, and a court has discretion what constitutes such cause. See In re Huckfeldt, 39 F.3d 829, 831 (8th Cir. 1994).

10. The U.S. Trustee asserts that the Debtor's unexplained failure to respond to the request constitutes such cause for dismissal and delays these proceeding to the detriment of all parties including creditors. As a result, the Debtor's case should be dismissed for cause.

WHEREFORE, based upon the foregoing, the United States Trustee respectfully requests that the Court dismiss this case for cause pursuant to 11 U.S.C § 707(a).

RESPECTFULLY SUBMITTED this 21st day of March 2017.

Respectfully Submitted,

DANIEL J. CASAMATTA
ACTING UNITED STATES TRUSTEE

PAUL A. RANDOLPH
ASSISTANT UNITED STATES TRUSTEE

BY: /s/ Leonora S. Long
Leonora S. Long, Trial Attorney
Missouri Bar #31655, Federal ID #31655MO
Office of United States Trustee
111 S. 10th Street, Room 6353
St. Louis, MO 63102
Phone (314) 539-2980, Fax (314) 539-2990
leonora.long@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was electronically mailed by the U. S. Bankruptcy Court, Eastern District of Missouri to those names listed below and / or by first class mail postage prepaid this 21st day of March 2017, to the following:

Sean C. Paul, Esq.
The Law Offices of Sean C. Paul, PC
8917 Gravois Rd., 2nd Floor
St. Louis, MO 63123

Seth A. Albin, Esq.
Albin Law
7710 Carondelet Ave., Suite 405
St. Louis, MO 63105

s/s/ Sandra L. Herling
Paralegal Specialist

U.S. Department of Justice

United States Trustee
Region 13
Arkansas, Missouri and Nebraska

111 South 10th St., Suite 6353 *(314) 539-2976*
St. Louis, Missouri 63102 *FAX (314) 539-2990*

January 31, 2017

Via Facsimile @ scp@stlbankruptcyfirm.com

Sean C. Paul, Esq.
The Law Offices of Sean C. Paul, PC
8917 Gravois Rd.
St. Louis, MO 63123

Re: Wolaver, Jason R. & Nicole R., Chapter 7 Debtors
Case No. 17-40329 - §341 Hearing 02/14/17 @ 9:00 a.m.

Dear Mr. Paul:

The Office of the United States Trustee ("OUST") is reviewing the above-referenced bankruptcy case for abuse within the meaning of 11 U.S.C. § 707(b)(2); information on the Chapter 7 Statement of Current Monthly Income and Means Test Calculation, Bankruptcy Form 22A.

Also the OUST has an obligation, under the provisions of 11 U.S.C. § 707(b)(3), which became effective for all Chapter 7 case filings on and after October 17, 2005, to review Chapter 7 filings to determine whether debtors whose debts are primarily consumer debts have filed a bankruptcy petition in bad faith, or under a totality of circumstances test whether the debtor's financial situation demonstrates abuse.

The initial review of the filed bankruptcy documents in this case suggest the debts set out therein are primarily consumer debts and merit further review under 11 U.S.C. § 707(b)(2) and under 11 U.S.C. § 707(b)(3).

To continue our review in order to make a determination of whether or not a Motion to Dismiss under 11 U.S.C. §707(b)(2) and/or under11 U.S.C. § 707(b)(3) should be filed in this case, please provide the undersigned with the following information and /or copies of documents:

1. Please provide copies of the last two years Federal and State tax returns filed by the Debtors.

2. Form 22A, Line 9(b) lists $1,908.22 for mortgage/rental expense. Schedule J lists $974.00. Please provide an explanation along with supporting documentation to explain.

3. Form 22A-2, Line 13b list a deduction in the amounts of $583.55 to American Honda Finance and $397.67 to Bank of America. According to the Debtors' Schedule D, there is a secured lien on a 2016 Honda CRV to American Honda and a secured lien on a 2014 Ford F15 to Bank of America. Please amend your Form 22A-2, with Line 13b showing an expense of $583.55 for the 2016 Honda CRV and Line 13e showing an expense of $397.67 for the 2014 Ford F150.

4. After the above adjustments to Form 22A-2, it appears that the presumption of abuse arises and the Debtors may not qualify for Chapter 7. Please confirm these calculations and inform the undersigned if you plan to dismiss or convert this case.

Please respond with the requested information and documents addressed to the undersigned on or before February 10, 2017. Failure to respond to this request may result in this office seeking the dismissal of this bankruptcy case. Please communicate with the undersigned should your client determine that this bankruptcy case will be converted to a Chapter 13 case.

Your compliance is anticipated and appreciated. If you should have any questions, don't hesitate to contact me.

Thank you for your attention hereto.

Sincerely,

Sandra L. Herling
Paralegal Specialist
Email Address: Sandra.L.Herling@usdoj.gov

cc: Seth A. Albin, Chapter 7 Panel Trustee
Leonora S. Long, Attorney for U. S. Trustee
Cynthia Moore, Bankruptcy Analyst for Office of U. S. Trustee

Herling, Sandra L. (USTP)

From:	Herling, Sandra L. (USTP)
Sent:	Thursday, February 16, 2017 11:02 AM
To:	Sean Paul (scp@stlbankruptcyfirm.com)
Cc:	Seth A. Albin - Stewart, Mittleman, Heggie & Henry, LLC (salbin@albinlawstl.com); Long, Leonora (USTP); Moore, Cynthia (USTP)
Subject:	FW: 17-40329 Wolaver, Jason R. & Nicole R. - Possible 707(b)
Attachments:	Wolaver - atty ltr-Albin.pdf

Mr. Paul – We have not received a response to our letter dated 01/31/17 (attached) as of this date. The §341 hearing has been continued to 03/21/17 @ 3:00 p.m. Please respond at your earliest convenience. Thank you.

Sandra L. Herling
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
Sandra.L.Herling@usdoj.gov

111 South 10th St

From: Herling, Sandra L. (USTP)
Sent: Tuesday, January 31, 2017 9:44 AM
To: 'scp@stlbankruptcyfirm.com'
Cc: Seth A. Albin - Stewart, Mittleman, Heggie & Henry, LLC (salbin@albinlawstl.com); Long, Leonora (USTP); Moore, Cynthia (USTP)
Subject: 17-40329 Wolaver, Jason R. & Nicole R. - Possible 707(b)

Wolaver, Jason R. & Nicole R.., Chapter 7 Debtors
Case No. 17-40329 - §341 Hearing 02/14/17 @ 9:00 a.m.

Sandra L. Herling
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
Sandra.L.Herling@usdoj.gov

111 South 10th St

Herling, Sandra L. (USTP)

From: Sean Paul <scp@stlbankruptcyfirm.com>
Sent: Monday, February 20, 2017 9:36 AM
To: Herling, Sandra L. (USTP)
Subject: Re: FW: 17-40329 Wolaver, Jason R. & Nicole R. - Possible 707(b)

I'll get this to you this week. I apologize.

On Thu, Feb 16, 2017 at 11:02 AM, Herling, Sandra L. (USTP) <Sandra.L.Herling@usdoj.gov> wrote:

Mr. Paul – We have not received a response to our letter dated 01/31/17 (attached) as of this date. The §341 hearing has been continued to 03/21/17 @ 3:00 p.m. Please respond at your earliest convenience. Thank you.

Sandra L. Herling
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
Sandra.L.Herling@usdoj.gov

111 South 10th St

From: Herling, Sandra L. (USTP)
Sent: Tuesday, January 31, 2017 9:44 AM
To: 'scp@stlbankruptcyfirm.com'
Cc: Seth A. Albin - Stewart, Mittleman, Heggie & Henry, LLC (salbin@albinlawstl.com); Long, Leonora (USTP); Moore, Cynthia (USTP)
Subject: 17-40329 Wolaver, Jason R. & Nicole R. - Possible 707(b)

Wolaver, Jason R. & Nicole R.., Chapter 7 Debtors

Case No. 17-40329 - §341 Hearing 02/14/17 @ 9:00 a.m.

Sandra L. Herling
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
Sandra.L.Herling@usdoj.gov

111 South 10th St

--

Sean C. Paul, Esq.
8917 Gravois Rd.
St. Louis, MO 63123
(314) 827-4027
(314) 222-0619 fax

Schedule a meeting with me through the web!
http://my.vcita.com/f6c162ec/scheduler

The Missouri Bar Disciplinary Counsel requires all Missouri lawyers to notify all recipients of e-mail that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you, or vice versa, (3) persons not participating in our communication may intercept our communications by improperly accessing your computer or my computer or even some computer unconnected to either of us which the e-mail passed through. I am communicating to you via e-mail because you have consented to receive communications via this medium. If you change your mind and want future communications to be sent in a different fashion, please let me know AT ONCE.

NOTICE OF CONFIDENTIALITY: This e-mail and its attachments, if any, are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this e-mail. If you have received this email in error, please notify the sender immediately by reply e-mail or telephone call to 1.314.827.4027 and delete this e-mail and any attachments from your computer system. The transmission of this message does not constitute the waiver of attorney-client or work product privilege.